

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Town of Wyoming,	:	
	:	C.A. No. 06-01-0121AP
Plaintiff Below,	:	
Appellee.	:	
	:	
vs.	:	
	:	
Stephen D. Miller,	:	
	:	
Defendant Below,	:	
Appellant,	:	
	:	

Submitted: July 11, 2006

Decided: July 17, 2006

Decision on Appellee's Motion for Reargument.

Appellee's Motion is denied.

**Cynthia J. Longobardi, Esquire, 225 South State Street, Dover, Delaware 19901,
attorney for Appellee.**

Stephen D. Miller, Post Office Box 189, Camden, Delaware 19934, Pro Se Appellant.

Trader, J.

In this civil appeal from the Justice of the Peace Court the appellee, Town of Wyoming, seeks reconsideration of the Court's ruling dismissing the appeal of Stephen D. Miller and denying the Town of Wyoming's request for default judgment. Since the motion for reconsideration is in reality a motion for reargument, the motion for reargument is denied as untimely. Additionally, since Melody Miller is not a party to this appeal, this appeal must be dismissed on jurisdictional grounds.

The relevant facts are as follows: On December 9, 2005, judgment was entered in behalf of the Town of Wyoming and against Stephen D. Miller and Melody A. Miller for the amount of \$200.00, plus court costs, prejudgment interest, and post judgment interest. On December 22, 2005, in the same case, judgment was entered in favor of Cynthia J. Longobardi, Esquire and against Stephen D. Miller and Melody A. Miller for attorney's fees in the amount of \$242.00. On December 29, 2005, the defendants' copies of the judgment were returned by the post office and the decision of the Court was picked up by the defendants on January 12, 2006. On January 27, 2006, the defendant, Stephen D. Miller, filed an appeal to this Court, and on June 13, 2006, Cynthia Longobardi, Esquire filed a direction to the Clerk to enter judgment.

The Town of Wyoming's motion for reconsideration is essentially a motion for reargument and is time barred. A motion for reargument must be filed within five days of the date of the Court's Order or it is untimely. *McDaniel v. Daimler-Chrysler Corp.*, 860 A.2d 321 (Del. 2004). The date of Court's Order was June 27, 2006, and the motion for reargument was not filed until July 11, 2006. Excluding Saturdays, Sundays and an intermediate holiday from the time of computation, the appellee's motion was still untimely filed.

Additionally, the plaintiff cannot proceed on the merits because of a lack of subject matter jurisdiction. The Court initially dismissed the defendant's appeal as untimely. The appellee now contends that the appeal time should run from January 12, 2006 rather than the date of the entry of the award of attorney's fees on December 22, 2005. Assuming *arguendo* that this contention is correct, the appeal must still be dismissed because all of the party defendants are not before the Court. The appeal was signed and filed by the defendant, Stephen D. Miller, only. It has been held that all of the defendants must be parties to an appeal for a trial *de novo*. *Cooper's Home Furnishings v. Smith*, 250 A.2d 507 ((Del. Super. 1969). This Court lacks jurisdiction if it cannot determine the whole action, as required of a trial *de novo* in an appeal from the Justice of the Peace Court. *Dzedzej v. Pruzinski*, 259 A.2d 384 ((Del. Super. 1969). The rule has been described by Judge Ridgely (now Justice Ridgely) as the mirror image rule because it provides a mirror image of the parties and issues tried below and insures retrial of the same cause of action as occurred in the Justice of the Peace Court. *Sulla v. Quillen*, 1987 WL 18425 at *1 (Del. Super. Sept. 24, 1987). Any variance from the lower court proceeding strips this court of jurisdiction. *Hicks v. Taggart*, 1999 WL 462375 at *3 (Del. Super. Apr. 12, 1999). Since the absence of one of the defendants strips this Court of jurisdiction, the appeal must be dismissed.

Accordingly, the motion for reargument is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge